

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEVADA, RENO

Dillon v. Graf, et al., Case No. CV-N-03-0119-HDM-VPC
Chao v. Graf, et al., Case No. CV-N-01-0698-DWH-RAM

NOTICE OF ORDER ESTABLISHING QUASI-BANKRUPTCY FOR EMPLOYERS MUTUAL PLANS, CLASS CERTIFICATION, PROPOSED SETTLEMENTS AND FINAL FAIRNESS HEARING; PROOF OF CLAIM

To: All persons (as well as Creditors of those persons), who paid contributions or premiums, or for whose benefit contributions or premiums were paid, for health insurance administered by Employers Mutual LLC, that was promised to be procured but never procured, and who have claims for unpaid health expenses incurred between January 1, 2001 and February 1, 2002.

THIS NOTICE MAY AFFECT YOUR RIGHTS. READ IT CAREFULLY. DO NOT CONTACT THE COURT OR THE COURT CLERK REGARDING THIS ACTION.

I. COURT ACTIONS TO COLLECT ASSETS AND PAY UNPAID HEALTH EXPENSES

This Notice pertains to two Court cases currently pending in the U.S. District Court in Nevada and involving Employers Mutual, LLC and unpaid health claims

A. The ERISA Proceeding On December 12, 2001, Elaine Chao, the Secretary of the United States Department of Labor, filed a Complaint in the above Court against among others, James Graf (“Graf”), for violations of the Employee Retirement Income Security Act of 1974 (“ERISA”) in the matter entitled Chao v. Graf, et al., Case No. CV-N-01-0698-DWH-RAM (the “ERISA Proceeding”). On December 13, 2001, in the ERISA Proceeding, the Court appointed Thomas A. Dillon (“Dillon”) as the “Independent Fiduciary” of the “Employers Mutual Plans”. The Employers Mutual Plans are the thousands of Employee Welfare Benefit Plans (EWBPs) that were created when employers established or maintained health insurance for the benefit of their employees (“Participants”), by attempting to procure health insurance marketed and administered by Graf at Employers Mutual, LLC. On April 30, 2002, the Court entered an Order establishing a “Quasi-Bankruptcy” for the Employers Mutual Plans whereby Dillon is responsible for collecting the assets of the Employers Mutual Plans to pay the unpaid health benefits owed to Participants and their health care providers. One asset each Employers Mutual Plan has is a malpractice and breach of contract cause of action against their respective insurance producer who failed to procure the insurance as promised. Dillon has filed litigation against the insurance producers of the Employers Mutual Plans to pay the unpaid claims.

In the Order Establishing the Quasi-Bankruptcy, the Court created categories of creditors (“Creditors”) and a schedule for the payment of their respective claims (“Claims”). They are as follows:

- The Independent Fiduciary, his attorneys, actuaries, accountants, consultants and other professional service providers are “Administrative Creditors” and they shall have first priority and be paid 100 percent of their claims;
- The Participants and beneficiaries who have paid out-of-pocket for medical and health claims, other than co-payments and deductibles, that should have been paid by the insurance promised to be procured are “Category A Creditors” and they have second priority and, as funds permit after payment of the Administrative Creditors, they will be paid 100 percent of their claims;
- The medical and health providers of the Participants of the Employers Mutual Plans are “Category B Creditors” and all other service providers are “Category C Creditors”, and they shall receive a pro rata distribution of the funds remaining after payment of the Administrative and Category A Creditor claims; and,
- The remaining obligations of the Employers Mutual Plans are “Category D Creditors” and they shall receive pro rata distribution of the funds remaining after payment of the Administrative and Category A, B and C Creditor claims.

B. The Civil Proceeding On March 3, 2003, a lawsuit was filed in the above Court by Dillon, on behalf of the Employers Mutual Plans, against approximately 400 defendant Insurance Producers, alleging, among other things, that the defendants failed to provide the health insurance as promised and they are therefore responsible for the unpaid health expenses of the Participants of the Employers Mutual Plans. The action entitled Thomas A. Dillon, as Independent Fiduciary v. James Graf, et al., Case No. CV-N-03-0119 is referred to as the “Civil Proceeding.”

The original Complaint was filed by Dillon, on behalf of the Employers Mutual Plans. However, it was discovered that in some cases, the alleged health insurance was sold to individuals outside of any employer/employee relationship. These “Individuals”, are arguably not subject to ERISA and Dillon may not represent their interests as the Independent Fiduciary of the Employers Mutual Plans. In order to protect these Individuals, Dillon obtained permission from the Court in the ERISA Proceeding and filed an Amendment to the Complaint creating a class action under Federal Rule 23 for the “Class of Individuals”. Dillon represents the Employers Mutual Plans and all Individuals that do not “opt-out” of the Class of Individuals. The class is defined below, but excludes EWBPs and Participants of EWBPs as their claims are being resolved in the Quasi-Bankruptcy proceeding;

The money recovered in the Civil Proceeding will be distributed according to the Categories of Creditors and Payment Schedule established by the Court in the ERISA Proceeding, with the inclusion of the Individuals who have paid out-of-pocket for medical expenses as Category A Creditors and the claims of health care providers of Individuals as Category B Creditors.

If you are an Individual (or an Assignee/Provider of an Individual), read Section II of this Notice carefully.

II. CLASS ACTION INFORMATION

A. The Class of Individuals includes: All Individuals (as well as Assignees of those Individuals) who paid premiums for the procurement of the alleged health insurance marketed by Employers Mutual, LLC outside of any relationship with an employer or Employee Welfare Benefit Plan, and who have unpaid health expenses arising therefrom. Excluded from the Class are the EWBPs and the Employers that created them, Participants of the Employers Mutual Plans, and defendants sued in the Civil Proceeding.

B. Automatic Inclusion in the Class: If you are a person who fits within the definition of the Class of Individuals, you are a “Class Member”. All Class Members that do not “opt-out” of this case, as discussed below, will have their claims resolved for them and will be bound by the results of this litigation, including the terms of any Judgment entered. The amount of your recovery, if any, will depend on the results of this lawsuit.

C. “Opting-Out” of the Class of Individuals: The option to “opt-out” applies only to Individuals as defined herein. All Claims of the Employers Mutual Plans and their respective Participants will be resolved in this case as there is no right to opt out of the Quasi-Bankruptcy. If you are a Class Member and do not wish to be included in this case, you may “Opt-Out”, and file an individual case at your own expense. To “opt-out” you must first provide written notice to Plaintiff’s Counsel, at the address below, that you are exercising your right to “opt-out” of this litigation. Such written notice must be sent via first class, certified mail, and must be post-marked on or before May 14, 2004. A copy of that document must also be filed with the Court, by you, by May 14, 2004.

III. FUTURE NOTICES

Notices of future additional settlements and other case related activity will be made available at the website of Hollister & Brace, at www.hbsb.com. Additional information will not be sent to you unless you request that Notices be mailed to you on the Proof of Claim Form attached hereto.

IV. CLASS CERTIFICATION, PROPOSED SETTLEMENTS AND FINAL FAIRNESS HEARING

On March 5, 2004, the Court in the Civil Proceeding issued an Order Preliminarily Certifying the Class of Individuals (thereby adding the Claims of Individuals to the Civil Proceeding), and Preliminarily Approving Wave I Settlement Agreements entered into by Dillon with certain defendant Insurance Producers to resolve the Claims of their respective clients unpaid health expenses. The Court set a date for Final Approval of the Wave I Settlements and Certification of the Class on June 4, 2004.

V. THE PROPOSED SETTLEMENTS

The Settling Defendants have all entered into one of three types of Settlement Agreements. A summary of the terms of each settlement is set forth below.

The three types of Settlements are:

A. “Straight Pay Settlement Agreements” are settlements whereby the Settling Defendant pays a specific amount into the Equitable Settlement Fund to be distributed to the Creditors in the categories and in the amounts as set out above.

B. “Formula Pay Settlement Agreements” are settlements whereby the defendants pay a percentage of the net unpaid claims into the Equitable Settlement Fund to be distributed to the Creditors and in the amounts as set out above.

C. “Stipulated Judgment Settlement Agreements” Certain Defendants purchased errors and omissions (“E&O”) insurance to cover them for damages caused to their clients by their negligent errors and omissions. Certain E&O insurers have failed or refused to defend the defendant Insurance Producers in the Civil Proceeding. It is Dillon’s contention that these E&O insurers have breached their contracts. Dillon and certain defendant Insurance Producers have agreed to have judgments entered against the Insurance Producers for the gross amount of unpaid claims and the defendant Insurance Producers have guaranteed to pay a percentage of the Judgment. Collection of the remainder of the Judgment is to come, if at all, from lawsuits to be filed against the E&O carriers. Dillon believes that the E&O Carriers have wrongfully refused coverage to the defendants sued in the Civil Proceedings. However, Dillon makes no guarantee that he will be able to prevail against the E&O Carriers.

The following defendants have agreed to settle based on the following:

Wave I Settlement Summary						
Name of Defendant	Type of Settlement	Amount of Gross Claims	Formula Pay Percent	Amount of Straight Payment	Amount of Personal Guarantee	Amount of Stipulated Judgment
American Benefit Society; Ashiotes, Cristopher; Doyle, James	STRAIGHT PAY	undetermined		\$850,000.00		
Alexander, Michael	STRAIGHT PAY	\$35,000.00		\$19,000.00		
Amann, John	STIPULATED JUDGMENT	\$62,157.07			\$8,000.00	\$62,000.00
Arnold, John	STIPULATED JUDGMENT	\$992,385.93			\$30,000.00	\$900,000.00
Arvin, Rob; Arvin & Associates	STRAIGHT PAY	\$8,000.00		\$8,000.00		
Associated Agents of America; DeBello, Michael; Forman, Nathan	STRAIGHT PAY	undetermined		\$300,000.00		
Barnhart, Willard	STIPULATED JUDGMENT	\$16,171.00			\$1,000.00	\$16,000.00
Batista, Harold	STRAIGHT PAY	\$26,308.27		\$15,000.00		
Berretta, Bart; Exec. & Empl. Benefits	STIPULATED JUDGMENT	\$47,665.75			\$20,000.00	\$50,000.00
Blackford, Stephen & the Blackford Group	STIPULATED JUDGMENT	\$29,896.26			\$10,000.00	\$30,000.00
Blust, Steven & Horizon Insurance	STIPULATED JUDGMENT	\$179,243.57			\$15,000.00	\$250,000.00
Bokofsky, Richard; R.B. Ins. Assoc.	STIPULATED JUDGMENT	\$641,115.36			\$100,000.00	\$450,000.00
Burkett, James; Burkett & Assoc.	STIPULATED JUDGMENT	\$231,194.72			\$50,000.00	\$250,000.00
Callaway, Gae	STIPULATED JUDGMENT	\$27,755.43			\$8,000.00	\$30,000.00
Carlson, Steven	STRAIGHT PAY	\$6,158.34		\$3,000.00		
Clark, Anneliese	STRAIGHT PAY	\$10,742.00		\$7,500.00		
Coats, Russell	STRAIGHT PAY	\$6,555.25		\$6,000.00		
Cobbey, John	STRAIGHT PAY	\$4,958.10		\$2,750.00		
Colella, James; Colella Financial Svs	STIPULATED JUDGMENT	\$110,000.00			\$30,000.00	\$110,000.00
Countie, Connie	STRAIGHT PAY	\$512.00		\$1,000.00		
Darbyson, Earl Grant	STIPULATED JUDGMENT	\$1,453,323.35			\$350,000.00	\$1,340,000.00
Davidson, Stephen D.; UBA Insurance Services, Inc	STIPULATED JUDGMENT	undetermined			\$15,000.00	\$1,000,000.00
Diaz, Maria	STRAIGHT PAY	\$3,989.77		\$7,000.00		
First Coast Premier Group, Inc; Poole, J. Gregory & Schoeppel, Pamela	STIPULATED JUDGMENT	\$2,720,018.59			\$300,000.00	\$2,000,000.00
Flanagan, John	STIPULATED JUDGMENT	\$55,073.11			\$8,000.00	\$55,000.00
Fleming, Kenneth II	STIPULATED JUDGMENT	\$1,600,000.00			\$25,000.00	\$1,000,000.00
Fletcher, Bruce	STIPULATED JUDGMENT	\$8,803.56			\$4,000.00	\$15,000.00
Gaetani, Francis	STRAIGHT PAY	\$2,087.00		\$4,000.00		
Gill, Robert	STIPULATED JUDGMENT	\$30,269.00			\$3,500.00	\$31,500.00
Gordon, Susan	STRAIGHT PAY	\$3,428.25		\$1,500.00		
Gore, Lillian Beth	STIPULATED JUDGMENT	\$75,887.76			\$20,000.00	\$76,000.00
Graham, Nancy & Petra Insurance	STRAIGHT PAY	\$0.00		\$2,000.00		
Grant, James	STRAIGHT PAY	\$0.00		\$3,000.00		
Greenstein, Lenny; Mitkowski, Jamie; Insurance Resource Group, Inc. & Coast to Coast Marketing, Inc.	STIPULATED JUDGMENT	\$1,696,249.61			\$150,000.00	\$1,500,000.00
Gregory, Suzanne	STIPULATED JUDGMENT	\$32,326.78			\$2,000.00	\$32,000.00
Gulledge, JoAnn	STIPULATED JUDGMENT	\$11,695.58			\$500.00	\$15,000.00
Haas, David; Haas Ins. Service	STIPULATED JUDGMENT	\$439,725.21			\$40,000.00	\$440,000.00
Hasselmeier, Robert J., Jr.	STIPULATED JUDGMENT	\$392,425.82			\$25,000.00	\$400,000.00
Higgins, Thomas E.	STRAIGHT PAY	\$115.00		\$1,750.00		
Hines, Samuel David	STIPULATED JUDGMENT	\$85,534.12			\$25,000.00	\$85,000.00
Hintz, George	STIPULATED JUDGMENT	\$12,587.63			\$2,500.00	\$15,000.00
Horch, Richard	STIPULATED JUDGMENT	\$81,004.37			\$5,000.00	\$80,000.00
Hughes, David Scott	STRAIGHT PAY	\$733.00		\$2,000.00		
Jasnoski, Jim	STIPULATED JUDGMENT	\$231,000.00			\$1,000.00	\$230,000.00
Jones, Brian	STRAIGHT PAY	\$2,167.00		\$1,000.00		
Jordan, Ezra Levern	STIPULATED JUDGMENT	\$157,019.44			\$25,000.00	\$200,000.00
Jordano, Keith	STRAIGHT PAY	\$3,954.00		\$2,197.67		
Kettler, Fredrick; Kettler & Associates, Inc.	STIPULATED JUDGMENT	\$5,509.96			\$5,000.00	\$25,000.00
Law, Dennis James	STRAIGHT PAY	\$1,199.64		\$3,000.00		
Lilly, James	STRAIGHT PAY	\$37,618.00		\$10,000.00		
Litvin, Harvey	STIPULATED JUDGMENT	\$285,000.00			\$4,990.00	\$300,000.00
McKinney, Bruce	STIPULATED JUDGMENT	\$1,674,429.11			\$50,000.00	\$1,000,000.00
Murphy, William; Payne, Dorothy Jean	FORMULA PAY	\$67,449.30	85%			
Naumann, Arthur P., Jr.	STRAIGHT PAY	\$4,996.96		\$2,500.00		
Olympic Mountain Agency, Iverson, Donna & Booth-Smith, Jan	STIPULATED JUDGMENT	\$116,393.60			\$40,000.00	\$116,000.00
Palmer, Robert Mathis	STRAIGHT PAY	\$4,228.00		\$2,875.70		
Parodi, Ed	STIPULATED JUDGMENT	\$710,392.58			\$15,000.00	\$700,000.00
Pinkerton, Brent; Nationwide Ins.	STIPULATED JUDGMENT	\$17,802.41			\$10,000.00	\$25,000.00
Reasner, Darla Mae	STIPULATED JUDGMENT	\$32,953.03			\$2,000.00	\$30,000.00
Rose, Scott; Mainstream Insurance	STRAIGHT PAY	\$42,040.01		\$20,000.00		
Sam, Catherine	STIPULATED JUDGMENT	\$33,028.59			\$2,000.00	\$33,000.00
Schrecker, Dennis	STRAIGHT PAY	\$118,939.79		\$65,000.00		
Siegal, Howard	STRAIGHT PAY	\$8,499.18		\$10,000.00		
Sierra Administration Managers, Inc.	STRAIGHT PAY	\$1,574,698.00		\$940,000.00		
Silva, David	STRAIGHT PAY	\$76,000.00		\$43,120.00		
Snow, Audrey; Reliable Ins. & Fin.	STIPULATED JUDGMENT	\$192,780.43			\$25,000.00	\$200,000.00
Stillwell-Kronick, Donna	STRAIGHT PAY	\$116,319.00		\$64,000.00		
Stone Robert Earl	STRAIGHT PAY	\$1,000.00		\$1,000.00		
Stump, Penny	STIPULATED JUDGMENT	\$89,728.06			\$5,000.00	\$90,000.00
Taormina, Nick	STIPULATED JUDGMENT	\$6,493.03			\$5,000.00	\$13,000.00
Thompson, Kyle	STIPULATED JUDGMENT	\$34,668.66			\$10,000.00	\$40,000.00
Toubin, James; Toubin Ins. Agency	STRAIGHT PAY	\$15,825.02		\$14,500.00		
Turnage, Stewart	STIPULATED JUDGMENT	\$39,965.01			\$3,000.00	\$40,000.00
Tuten, James; Mullinax, Robert; Association Benefits Solutions, Inc	STIPULATED JUDGMENT	\$1,494,318.00 (r)			\$25,000.00	\$1,200,000.00
Waddell, Gene & Waddell Ins. Group	FORMULA PAY	\$1,674,429.00	85% up to limits			
Wall, Ray; Ray Wall & Assoc.	STIPULATED JUDGMENT	\$30,002.62			\$20,000.00	\$35,000.00
Ward, Gary	STIPULATED JUDGMENT	\$130,755.41			\$40,000.00	\$130,000.00
Williamson, Karel Anne	STRAIGHT PAY	\$506,781.00		\$350,000.00		
Wolfe, Carmen & Wolfeco, Inc.	FORMULA PAY	\$37,151.95	85%			
	TOTAL:			\$1,000,000.00*	\$2,762,693.37	\$1,535,490.00
						\$14,639,500.00

*=Approximately. (r)= Retail Sales. Gross unpaid claims does not include the deductions for the yearly deductible or co-pay of 20%.

V. RIGHT TO OBJECT TO SETTLEMENTS

If you disagree with a proposed settlement you must send a written objection stating the grounds for same to Plaintiff’s Counsel (address below). The written objection must be sent via first class, certified mail, and must be post-marked on or before May 20, 2004. A copy of the objection must also be filed with the Court, by you, by May 20, 2004.

VI. COUNSEL REPRESENTING THOMAS DILLON, THE INDEPENDENT FIDUCIARY AND CLASS ACTION REPRESENTATIVE:

Robert L. Brace, Hollister & Brace, Post Office Box 630, Santa Barbara, CA 93102; Tel: (805) 963-6711; email: hblaw@hbsb.com. Case information including Orders of the Court, Proof of Claim forms, and updated settlement information, is available at Plaintiff’s Counsel’s website: www.hbsb.com. Hollister & Brace will request a fee of 30% of the net amounts actually recovered from the Settling Defendants. You have the right to represent yourself or to retain your own independent counsel and enter an appearance in this lawsuit at your own expense.

VII. CLAIMS RESOLUTION PROCESS

IN ORDER TO PARTICIPATE IN THE CLAIM RESOLUTION PROCESS, YOU MUST FILE A PROOF OF CLAIM NO LATER THAN JULY 15, 2004 OR YOU WILL BE BARRED FROM ANY RECOVERY. BY FILING A PROOF OF CLAIM IN AND PARTICIPATING IN THE PROOF OF CLAIM PROCESS, YOU AGREE TO SUBJECT YOURSELF AND YOUR CLAIM TO THE JURISDICTION OF THE COURTS IN THE ERISA AND CIVIL PROCEEDINGS IDENTIFIED HEREIN. ADDITIONALLY, YOU AGREE THAT THE RESOLUTION OF YOUR CLAIM WILL BE FINAL AND YOU WILL BE PRECLUDED FROM PURSUING CLAIMS AGAINST THE SETTling DEFENDANTS, THE PARTICIPANTS AND THE INDIVIDUALS, AND THEIR RESPECTIVE BENEFICIARIES, IN THIS OR ANY OTHER COURT

PLEASE READ THE NOTICE AND INSTRUCTIONS BEFORE COMPLETING THIS FORM

Street address SS # or Tax Payer Id #

Date: _____

Signature of Person Submitting Statement Of Claim _____